IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Commercial Taxes Officer, Special Circle II,Jodhpur	vs.	M/s Synco Textiles Pvt. Ltd.

S.B. Sales Tax Revision Petition No.642/1999 against the judgment dated 13.3.1997 passed by the Tax Board,Ajmer Appeal No.34/95/ST/Jodhpur.

Date of Judgment: July 04 , 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha for the petitioner.
Mr. Rajendra Mehta for the respondent.

BY THE COURT:

Heard learned counsel for the parties.

The respondent M/s Synco Taxtiles Pvt. Ltd. submitted an application on 29.6.1987 for grant of eligibility certificate. According to the petitioner, the respondent-Company to avail the benefit under the incentive scheme, declared the date of commercial production as 25.6.1987 in the application submitted under the incentive scheme but according to the petitioner, the respondent no.2 started commercial production on 22.12.1986. In support of that, the petitioner relied upon return filed by the assessee company for the period ending 28.2.1987 declaring turnover of Rs.11,24,988/-. It is submitted that the District Level Screening Committee, Sirohi in its meeting dated 29.1.1988

decided to grant eligibility certificate for fixed capital investment of Rs.59,93,000 to the assessee company. In pursuance of the said decision dated 29.6.1988 of the screening committee, the Commercial Taxes Officer issued eligibility certificate dated 12.2.1988 under clause-7 of the incentive scheme for the period 1.2.1988 to 31.1.1989.

On 28.3.1988, the Commercial Taxes Officer, Sirohi issued show cause notice as to why the eligibility certificate dated 12.2.1988 may not be cancelled. It appears that said notice was issued on purported ground of respondent no.1's starting of the commercial production before 5.3.1987, i.e. prior to coming into force of the scheme of 1987. The screening committee ultimately cancelled the eligibility certificate granted to the petitioner in its meeting on 25.4.1988. According to the petitioner, thus the eligibility certificate issued on 12.2.1988 became ineffective and inoperative. Therefore, the Commercial Taxes Officer, vide his order dated 1.1.1990 refused to renew the eligibility certificate dated 12.2.1988. However, on 30.6.1990, the screening committee decided to withdraw the notice of revocation of eligibility certificate and directed the Commercial Taxes Officer to renew the eligibility certificate dated 12.2.1988, considering that commercial production from 22.12.1986 was merely for testing and experimental purposes and the actual commercial production has taken place on 25.6.1987. It appears that the Commissioner, Commercial Taxes Department,

Rajasthan, Jaipur also passed order on 6.10.1990 in exercise of power under clause 9(b) of the incentive scheme and permitted the assessing authority to proceed for assessment and recovery of tax from the industrial unit as per provisions of law. After order of the Commissioner, Commercial Taxes Department dated 6.10.1990, the Commercial Taxes Officer issued notice dated 9.10.1990 fixing the date of hearing 25.10.1990 and calling upon the assessee to show cause against the levy of tax. It appears that in the meeting dated 11.12.1990, the screening committee approved the order of the Commissioner, Commercial Taxes, Rajasthan, Jaipur dated 6.10.1990 passed under clause 9(b) of this incentive scheme. The screening committee also decided to cancel the eligibility certificate in exercise of power under clause 9(c) of the incentive scheme.

The assessee being aggrieved, preferred writ petition No.4551/90 (new number 3298/99) before this Court seeking reliefs including quashing the impugned notice dated 9.9.90 issued by the Commercial Taxes Officer, 'C' Circle, Jodhpur and the assessee also sought the direction against the Commercial Taxes Officers for grant of renewal of the eligibility certificate to the assessee company for a further period of one year or thereafter with effect from 1.2.1990. The assessee-company further prayed that it may be declared that the company is entitled to avail the benefit of incentive scheme to the extent of investment made

by it during the operative period of the incentive scheme.

In the said writ petition no.4551/90 (new number 3298/99), on 24.10.1990, interim order was passed restraining the Commercial Taxes Officers from passing final assessment order. On representation of the respondent-Company, the screening committee in its meeting dated 22.2.1991, after noticing the interim order passed by this Court dated 24.10.1990, decided to maintain the status quo as on 11.12.1990. It appears that the respondent-Company vide its letter dated 15.1.1994 requested to raise the eligibility amount upto Rs.77.32 lacs and the screening committee thereupon held that the assessee shall be entitled to increase in eligibility limit but in case writ petition pending before the High Court would be decided against the respondent-Company, the respondent-Company would be liable to pay the amount of Rs.16.74 lacs, in addition to earlier eligibility amount. With this condition, the screening committee decided to confer further benefits of Rs.16.74 lacs to the assessee-Company.

After the order dated 25.7.1994 passed by the Screening Committee giving benefit to the assessee subject to the decision in the writ petition, it was submitted before this Court in assessee's above writ petition that the desired relief has been granted to the petitioner by District Level Screening Committee and, therefore, the writ petition has become infructuous. On this submission from the assessee's advocate,

the writ petition was dismissed by High Court vide order dated 5.8.1994. According to the petitioner, the counsel for the petitioner was not aware with the full facts and, therefore, the statement of the counsel for the petitioner assessee was not controverted but when the department came to know about the order dated 5.8.1994, the department decided to submit application for recalling of the order dated 5.8.1994. The department's application (misc. Petition no.26/95) was dismissed by this Court on 21.2.1995. The department thereafter preferred D.B. Civil Special Appeal to challenge the order of Single Judge dismissing the writ petition being infructuous. Said special appeal was allowed by the Division Bench of this Court by order dated 3.10.1996. Though the dismissal of the writ petition of the assessee was set aside by the order of the Division Bench on 3.10.1996 but it appears that this fact was not brought to the notice of the Tax Board when the petitioner's appeal was heard by the Tax Board. The Tax Board, therefore, in its order dated 13.3.1997 observed that the writ petition of the petitioner has already been dismissed having become infructuous and the department's application for recalling of the order has also been dismissed and still the department has not taken any steps after the decision of the High Court in assessee's matter and the order passed by the Screening Committee has already been made applicable and in view of the above, the department cannot put any liability upon the assessee

with retrospective effect.

The grievance of the petitioner is against the observations made by the Tax Board in its impugned order dated 13.3.1997 wherein the Tax Board observed that the Department did not investigate the matter in the light of the decision of the High Court whereas the writ petition is still pending before the High Court. The Tax Board also wrongly observed that the order passed by the screening committee has come into effect and, therefore, no retrospective effect can be given to any orders against the interest of the assessee. This is also due to same factual mistake because the order of the screening committee itself is a conditional order.

Learned counsel for the respondent vehemently submitted that no wrong has been committed by the Screening Committee in giving benefit to the petitioner. The Screening Committee also, if, made the order of benefit subject to the decision of the writ petition, then also, the department should not have any grievance and they should not have preferred any appeal against the said order. However, learned counsel for the respondent admitted that after the decision of the Division Bench, the writ petition filed by the petitioner is still pending, therefore, any order if will be passed in the said writ petition, that will have its own effect. It is also submitted that in any case, no retrospective effect to any order adverse to the interest of the assessee

can be given by the department and, therefore, the observations of the Tax Board that the department cannot make the order effective retrospectively, the Tax Board has not committed any error.

I considered the submissions of the learned counsel for the parties.

The facts have been given in detail because of the reason that once the benefit under the incentive scheme was given to the assessee, that was withdrawn by the screening committee and the matter was again considered and that withdrawal order was withdrawn and thereafter because of further investment, more benefit has been allowed by the screening committee to the assessee.

In the last order dated 25.7.1994, the screening committee merely observed that the decision of the screening committee shall be subject to any order which may be passed by the High Court in assessee's writ petition. It appears from the order of the Tax Board dated 13.3.1997 that at that time, the Tax Board, under impression that the writ petition of the assessee has been dismissed by the High Court and the review filed by the department also has been dismissed, therefore, the Tax Board in para 5 observed that the department failed to take any action after and in pursuance of the order passed by the High Court deciding the writ petition. But it appears from the facts of the case that

the department preferred appeal against the order of the learned Single Judge and the D.B. Special Appeal was allowed by the Division Bench of this Court vide order dated 3.10.1996 and the matter has been remanded to the Single Bench for deciding the writ petition on merits. In view of the above, the observation made by the Tax Board that the department/screening committee has not taken action after the decision by the Rajasthan High Court in the assessee's writ petition No.4155/90(New No.3298/99) was based only on the basis of the wrong fact which was before the Tax Board. In view of the fact that the writ petition is pending and there is no final order passed by the High Court in the writ petition filed by the assessee, therefore, all said and done by the Tax Board in para 5 is of no consequence. The fact remains is that there is order passed by the screening committee dated 25.7.1994 (Annx-C) and its decision is and shall be subject to the decision of the writ petition and any order passed in that writ petition.

Since this Court has not decided any issue of question of fact or law involved in the controversy between the parties and it is not subject matter of this revision petition and only the subject matter in the revision petition is whether the condition imposed by the screening committee while granting benefit to the assessee is subject to the decision or order passed by the High Court, therefore, this order will not affect right of any of the parties in any of the proceedings.

With the above observations, this revision petition is disposed of.

(**PRAKASH TATIA),J.**

S.Phophaliya/MLT.